A

**ABDUL KARIM KULA**

**v.**

**PP**

B HIGH COURT SABAH & SARAWAK, KOTA KINABALU
ABDUL RAHMAN SEBLI JC
[CRIMINAL APPEAL NO: K42-09-2009]
25 NOVEMBER 2009

C ***CRIMINAL LAW:*** *Anti-Corruption Act 1997 - Section 11(c) - Intent to deceive principal through use of document known to be false or defective - Whether s. 44(1)(a) of the Anti-Corruption Act 1997 applicable - Anti Corruption Act 1997, s. 11(c), 44(1)*

D ***CRIMINAL PROCEDURE:*** *Appeal - Appellate court, power and duty of - Misdirection by trial judge - Misdirection not occasioning a miscarriage of justice - Whether appellate intervention warranted*

E ***CRIMINAL PROCEDURE:*** *Appeal - Fact, finding of - Misdirection by trial judge relating to dates of the offences - Trial judge's findings of fact made after a proper evaluation of evidence - Whether appellate interference warranted*

F ***CRIMINAL PROCEDURE:*** *Charge - Framing or particulars of - Particulars as to time, place and person - Whether mandatory to state date of offences in the charge - Whether exact date and exact time of offences ought to be stated in charge - Criminal Procedure Code, s. 153(1)*

G ***CRIMINAL PROCEDURE:*** *Trial - Conclusion of trial - Duty upon a court - Whether court duty bound to re-evaluate the prosecution's evidence - Whether court to consider entire evidence and determine whether defence had cast a reasonable doubt*

H ***EVIDENCE:*** *Accomplice - Corruption case - Accused charged with offences relating to an 'intent to deceive' his principal - Whether witness testifying against accused an accomplice - Whether trial judge correct in applying s. 44(1)(a) of the Anti-Corruption Act 1997 to witness - Whether s. 44(1)(a) of the Anti-Corruption Act 1997 applicable to offences accused charged with - Anti-Corruption Act 1997, s. 11(c), 44(1)*

I ***EVIDENCE:*** *Accomplice - Evidence of - Presumption against the credibility of an accomplice - Whether presumption not to be applied without due consideration to the evidence of the accomplice - Evidence Act 1950, s. 114(b)*

***EVIDENCE:*** *Circumstantial evidence - Standard of proof - Whether higher burden of proof upon prosecution when relying on circumstantial evidence*

The appellant was convicted in the Sessions Court on ten counts under s. 11(c) of the Anti-Corruption Act 1997 ('the Act'). He was sentenced to a total term of five years' imprisonment and to a total fine of RM429,000, in default three years' imprisonment. He appealed to the High Court against conviction and sentence. The appellant had apparently signed Local Purchasing Orders (LPOs) and invoices amounting to RM92,000, which contained false material particulars with intent to deceive his principal. On appeal, the decision of the Sessions Court was attacked on the following grounds: (i) the trial judge had misdirected herself in deciding that the dates in the charges did not constitute an essential ingredient of the offences charged; (ii) the trial judge misdirected herself in holding that a witness – PW52 – was protected under s. 44(1)(a) of the Act; and (iii) the trial judge was wrong in accepting wholesale the evidence of two witnesses – PW6 and PW52.

**Held (dismissing the appeal):**

**(1)** By virtue of s. 153(1) of the CPC, it is mandatory to state the time of the offence in a charge. This is to give the accused every opportunity to effectively meet the prosecution's case. The accused must not be placed in the position of not knowing when the offence he is accused of committing actually took place. This is particularly important where the accused is putting up the defence of alibi. However, a charge need not specify the exact date and the exact time of the offence. So long as the time specified gives the accused sufficient notice of the period he is alleged to have committed the offence, the requirement of s. 153(1) of the CPC is satisfied. (para 7)

**(2)** In the instant case, the trial judge had erred and misdirected herself in holding that the dates of the offences were not an essential ingredient of the offences charged. Nevertheless, not every misdirection warranted appellate intervention. The appellate court will only interfere where a misdirection has occasioned a miscarriage of justice, which depends on the facts of each case. If on a proper consideration of the evidence a conviction is found to be correct, the misdirection will be of no consequence. *Dato' Seri Anwar Ibrahim v. PP & Another Appeal* (foll). (paras 9 & 10)

**(3)** Evidence need not be direct. Indirect or circumstantial evidence is also evidence upon which a particular fact may be proved. If the prosecution relies on indirect or circumstantial evidence, proof of that fact will depend entirely on inferences to be drawn from the established facts. Where there is more than one inference that can reasonably be drawn from a set of facts, the inference most favourable to the accused must be adopted. Whether the evidence is direct or circumstantial the quantum of proof is the same, *ie*, proof beyond reasonable doubt, not proof beyond the shadow of a doubt. The law does not impose a higher burden of proof where the prosecution is relying on circumstantial evidence instead of direct evidence. *Liew Kaling v. PP* (refd); *Tai Chai Keh v. PP* (refd); *Looi Kow Chai & Anor v. PP* (refd). (paras 11, 12 & 13)

**(4)** In the instant case, the trial judge was entitled to arrive at her findings of fact which proved that the appellant was guilty of the offences charged. She had properly and adequately considered the evidence before arriving at her conclusions. The evidence against the appellant was overwhelming. Her findings of fact stood on their own and survived her misdirection on the dates. There was no reason for appellate interference with her findings. (paras 14 & 15)

**(5)** Section 44(1)(a) of the Act modifies the rule on accomplice evidence by doing away with the need for corroboration. However, s. 44(1)(a) only refers to acts in relation to 'any gratification', as defined in s. 2 of the Act. In the instant case, the gravamen of the charges against the appellant concerned the 'intent to deceive the principal' which had no relation to s. 44(1)(a) of the Act. The trial judge was therefore wrong in invoking s. 44(1)(a) of the Act in relation to the evidence of PW52. However, on the facts the trial judge's handling of PW2's evidence was not open to any valid criticism. (paras 20, 21 & 25)

**(6)** The presumption against the credibility of an accomplice under s. 114(b) ought not to be applied without due consideration given to the evidence of the accomplice. Further, in the instant case, the court was bound by s. 44(2) of the Act. The intention behind subsections 44(1) and (2) of the Act is to give the anti-corruption authority sufficient clout to combat corrupt practices involving willing partners in crime. The court must give full effect to these provisions unless it can be shown that the

judgment is perverse or that a substantial miscarriage of justice had occurred. To do otherwise would be to defeat the intention of Parliament. *PP v. Haji Ismail & Anor* (foll). (paras 26, 27, 28 & 29)

**(7)** In the instant case, the trial judge had seriously considered the testimonies of both PW52 and PW6 and found their evidence to be reliable. Having regard to the totality of the evidence and the probabilities of the case there was no reason to disagree with her. In any case it was for the learned trial judge who had the advantage of seeing PW52 and PW6 giving evidence to decide whether they were truthful witnesses or otherwise. (paras 32)

**(8)** Section 182A(1) does not impose a duty upon the courts to re-evaluate the prosecution's evidence. The section requires the court to consider the entire evidence and determine whether the evidence presented by the defence had cast a reasonable doubt in the court's mind as to the truth of the prosecution case. There is no need to re-evaluate the prosecution's evidence because at the end of the prosecution's case, the prosecution's evidence has been subjected to a maximum evaluation and the witnesses found to be credible witnesses. *Mat v. PP* (refd); *PP v. Ong Cheng Heong* (refd); *PP v. Dato' Seri Anwar Ibrahim (No 3)* (refd); *Balachandran v. PP* (refd); *PP v. Mohd Radzi Abu Bakar* (refd). (paras 33 & 34)

**(9)** The record of appeal showed that the trial judge had given careful consideration to every material point raised by the defence and had rejected them. She was satisfied that the appellant's explanation had failed to cast any reasonable doubt in her mind as to the truth of the prosecution's case. The appellant was rightly convicted of the offences charged. (para 36)

**Case(s) referred to:**

*Balachandran v. PP [2005] 1 CLJ 85 FC* ***(refd)***
*Dato' Seri Anwar Ibrahim v. PP & Another Appeal [2004] 3 CLJ 737 FC* ***(refd)***
*Ghazali Salleh & Anor v. PP [1993] 3 CLJ 638 HC* ***(refd)***
*Law Kiat Lang v. PP [1965] 1 LNS 81* ***(refd)***
*Liew Kaling v. PP [1960] 1 LNS 60 HC* ***(refd)***
*Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA* ***(refd)***
*Mat v. PP [1963] 1 LNS 82 HC* ***(refd)***
*Miller v. Minister of Pensions [1947] All ER 372* ***(refd)***
*PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC* ***(refd)***
*PP v. Hj Ismail & Anor [1940] 9 MLJ 76* ***(foll)***

*PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC* ***(refd)***
*PP v. Ong Cheng Heong [1998] 4 CLJ 209 HC* ***(refd)***
*Re Pichi Muthu [1970] 2 MLJ 143* ***(refd)***
*Tai Chai Keh v. PP [1948] 1 LNS 122* ***(refd)***
*Tengku Mahmood v. PP [1974] 1 LNS 176 FC* ***(refd)***
*Yeap Peng Hin v. PP [1991] 3 CLJ 1907; [1991] 4 CLJ (Rep) 285 HC* ***(refd)***

**Legislation referred to:**
Anti-Corruption Act 1997, ss. 2, 11(c), 44(1)(a), (2)
Criminal Procedure Code, ss. 153(1), 182A(1)
Evidence Act 1950, s. 114(b)
Penal Code, s. 161

*For the appellant - Datuk Chau Chin Tang; M/s Chau & Thien*
*For the PP - Ahmad Sazilee Abdul Khairi DPP*

*Reported by Andrew Christopher Simon*

## JUDGMENT

**Abdul Rahman Sebli JC:**

### Factual Background

**[1]** The appellant was charged in the Sessions Court at Kota Kinabalu with ten offences under s. 11(c) of the Anti Corruption Act 1997 ("the Act") and was found guilty on each count after a full trial. He was sentenced to a total concurrent term of five years imprisonment and a total fine of RM429,000 in default three years imprisonment. Section 11(c) of the Act under which the appellant was convicted provides as follows:

> If
>
> (c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,
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> he shall be guilty of an offence.

**[2]** The documents which formed the basis of the charges were ten Local Purchase Orders ("LPOs") and ten invoices involving a total claim of RM92,000. These LPOs and invoices related to orders made by the Beaufort Education Office to the suppliers for

the supply of goods and services at the costs stated in the LPOs. The appellant was head of the Beaufort Education Office at the material time. The prosecution case is that these LPOs and invoices contained false material particulars to the knowledge of the appellant and that he had used them with intent to mislead the principal. After a very careful evaluation of the entire prosecution evidence the learned trial judge found that the prosecution had established a *prima facie* case against the appellant.

**[3]** Before this court the decision is attacked on three fronts, in the following order:

1. The learned trial judge misdirected herself in holding that the dates in the charges do not constitute an essential ingredient of the offences charged.

2. The learned trial judge misdirected herself in holding that PW52 had not exceeded the role of a witness for him to be protected under s. 44(1)(a) of the Act.

3. The learned trial judge was wrong in accepting wholesale the evidence of PW6 and PW52.

## The Dates In The Charges

**[4]** It is the prosecution case that the offences were committed on the dates written on the LPOs. However none of the witnesses called by the prosecution testified that it was the appellant who wrote the dates. The prosecution evidence merely shows that the LPOs were signed in 2004. The appellant's contention is that since the prosecution failed to prove that the appellant signed the LPOs on the dates written on the LPOs the prosecution failed to prove that the offences were committed on the dates specified in the charges. The learned trial judge disagreed. In her opinion the failure to prove the dates in the LPOs was not fatal to the prosecution case and had not raised any reasonable doubt in her mind as to the case for the prosecution. This is how she dealt with the issue:

> The issue that arose was whether the prosecution's failure to prove the commission of the offences on those dates had raised a reasonable doubt in the case for the prosecution. The answer to this, in my opinion, turns on whether the dates stated in the charges are an essential element of the alleged offences. It has been consistently the decision of the courts in this country that the date of offence is of no importance unless it is an essential part of the alleged offence.

**[5]** It is obvious that the learned trial judge was echoing what Thompson LP said in *Law Kiat Liang v. PP* [1965] 1 LNS 81, as follows:

> With regard to the first of these charges, the dates are wrong and the charge was at no time amended. This in itself, however, is without importance. As was observed by Atkin J in the case of *Severo Dossi* [1918], 13 Cr. App R. 158, 159:
>
> > From time immemorial a date specified in an indictment has never been a material matter unless it is actually an essential part of the alleged offence.

**[6]** Learned counsel for the appellant submitted that the learned trial judge was wrong in applying *Law Kiat Liang* as that case had been overruled by the Federal Court in *Dato' Seri Anwar Ibrahim v. PP & Another Appeal* [2004] 3 CLJ 737. *Dato' Seri Anwar Ibrahim* must be considered in its proper context and having regard to the factual matrix of that case. The issue in *Dato' Seri Anwar Ibrahim* was not whether the date was an essential element of the offence but whether the date of the offence had been proved. As a matter of fact the date in that case was specified in the charge as required by s. 153(1) of the Criminal Procedure Code ("the Code"). In my view the proper context of *Dato' Seri Anwar Ibrahim* in relation to the issue of date is reflected in the following passage of the judgment (at p. 781):

> In the instant appeals we are dealing with the question whether, the offences not having been proved to have been committed on another date, it must be proved to have been committed on the date stated in the charges. Section 153(1) of the Criminal Procedure Code clearly states that "The charge shall contain such particulars as to the time …" Since it is mandatory to state the "time" (ie, date or period) when an offence is alleged to have been committed, clearly it is a "material matter" and an "essential part of the alleged offence", to use the words of Atkin J in the exception excepted by him, even if that case is applied. If the law provides that the charge shall state the particulars as to the "time", it follows that such particulars must be proved.
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> In any event, reading the judgment of the High Court, even though the learned judge did not mention the date of the offence when he listed the ingredients to be proved (see [2001] 3 CLJ 313 at p. 396), it is clear from his judgment that when he found that the charges had been proved, he meant the date as well. **So, there is really no issue whether the date of the alleged offences as stated in the charges have to be proved. The issue is whether it is proved.** (emphasis added)

**[7]** Clearly by virtue of s. 153(1) of the Code it is mandatory to state the time of the alleged offence. Even without s. 153(1) of the Code fairness demands that the time of the offence must be stated in the charge. This is to give the accused every opportunity to effectively meet the prosecution's case. The accused must not be placed in an unenviable position of not knowing when the offence he is accused of committing actually took place. This is particularly important where he is putting up the defence of alibi. This does not mean however that the charge must specify the exact date and the exact time of the offence. So long as the time specified gives the accused sufficient notice of the period he is alleged to have committed the offence the requirement of s. 153(1) of the Code is satisfied.

**[8]** Like *Dato' Seri Anwar Ibrahim*, the issue in the present appeal is not whether the dates are an essential element of the offences but whether the dates had been proved. The Federal Court in *Dato' Seri Anwar Ibrahim* overturned the conviction because the High Court was found to be wrong in finding that the offence was committed on the date specified in the charge. The court came to this conclusion after finding the complainant's evidence, particularly on the date of the offence to be doubtful. Clearly therefore the acquittal of Dato' Seri Anwar Ibrahim was due to lack of evidence and not due to any misdirection by the trial court on any essential element of the offence.

**[9]** Be that as it may, in the face of *Dato' Seri Anwar Ibrahim,* I am constrained to agree with learned counsel that the learned trial judge was wrong in holding that the dates of the offences were not an essential ingredient of the offences charged. The question is whether the misdirection renders the judgment fundamentally flawed. It is not every misdirection that warrants appellate intervention. It is only when the misdirection has occasioned a miscarriage of justice that the appellate court will interfere. If an innocent man is convicted or a guilty one acquitted, that will constitute miscarriage of justice. Whether a miscarriage of justice has occurred depends on the facts of each individual case.

**[10]** The fact that the learned trial judge in the instant case misdirected herself on the question of date does not, by that fact alone, necessarily mean that a miscarriage of justice had occurred and that the convictions must, as night follows day, be quashed. It is the duty of the court to consider whether the convictions are supported by the evidence. If upon a proper consideration of the

A evidence the convictions are found to be correct, the misdirection will be of no consequence. In the final analysis it is the evidence that matters.

**[11]** At the heart of counsel's argument is his contention that the
B prosecution had not produced any evidence to show when the appellant signed the LPOs. Presumably what learned counsel is talking about is direct evidence, in which case he is right because none of the witnesses called by the prosecution testified that they actually saw the appellant writing down the dates when he signed the LPOs. But evidence need not be direct. Indirect or
C circumstantial evidence is also evidence upon which a particular fact may be proved. Of course if the prosecution is relying on indirect or circumstantial evidence, proof of that fact will depend entirely on inferences to be drawn from the established facts. The principle on the drawing of inferences in a criminal case is clear. In *Liew Kaling*
D *v. PP* [1960] 1 LNS 60 the Court of Appeal laid down the rule that before an inference can be regarded as a valid one it must comply with two conditions:

(i) it must account for all the known facts; and

E (ii) it must be the only reasonable inference which will account for all these facts.

**[12]** Where there is more than one inference that can reasonably be drawn from a set of facts, the inference most favourable to the
F accused must be adopted: see *Tai Chai Keh v. PP* [1948] 1 LNS 22 per Spencer Wilkinson J. If at the close of the prosecution case two or more inferences may be drawn from the prosecution evidence then the inference most favourable to the accused must be drawn: see *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734.

G **[13]** Whether the evidence is direct or circumstantial the quantum of proof is the same, ie, proof beyond reasonable doubt, not proof beyond the shadow of a doubt. The law does not impose a higher burden of proof where the prosecution is relying on circumstantial evidence instead of direct evidence. In the context of the present
H case what the court has to consider is whether the sum total of the evidence points to the fact that the offences were committed on the dates specified in the charges. For this purpose it is necessary to consider whether the dates on the LPOs were written by the appellant when he signed them. This is basically a question of fact.

I

**[14]** In this regard the trial court's findings on certain issues of fact are important in determining whether an inference can be drawn that the offences were committed on the dates specified in the charges. The learned trial judge's findings are expressed in the following terms (at p. 63 of the grounds of decision):

> Even though there was no evidence as to who wrote the dates against the signatures of the accused in the LPOs, the incontrovertible fact was that the accused had signed all the LPOs in 2004 during his tenure as head of Divisional Education Office Beaufort. The evidence adduced showed that when the accused signed the LPOs and certified the invoices (except P31), he knew that the material particulars therein were false. This knowledge is the essential ingredient of the offences charged and not the dates of signing. The knowledge of the accused was proved through the combined testimonies of PW6, PW52 as well as PW7 which cumulatively showed that the source of the falsity was none other than the accused himself. The evidence showed the accused from the start providing false particulars to PW52, instructing PW6 to prepare the LPOs based on the invoices that the accused knew to contain false particulars, authorizing the issuance of the LPOs and letting the documents go until their submission to the Accountant General's office to process payment. The evidence incontrovertibly point to the year 2004 as the period in which all these occurred. More so, the evidence adduced showed that at the time the accused instructed for the invoices to be prepared and at the time of signing the LPOs and letting go of them, he had knowledge of the falsity of the material particulars. That and not the signing of the LPOs or invoices was the essential part of the charges.

**[15]** On the evidence before her the learned trial judge was perfectly entitled to arrive at those findings of fact, which effectively means that the appellant is guilty of the offences charged. I would go so far as to say that the evidence against the appellant is overwhelming. These findings of fact stand on their own and as such survive the trial judge's misdirection on the issue of date. The principles on appellate interference with findings of fact by the trial court are well settled. It is only where the trial court has failed to sufficiently and judicially appreciate the evidence that the appellate court will interfere. In this case the learned trial judge had properly and adequately considered the evidence before arriving at those conclusions. I find no reason to interfere with her findings.

**[16]** The only consequence of her misdirection is that the learned trial judge did not proceed to consider whether the dates on the LPOs were written by the appellant and if so when. She merely concluded that the LPOs were signed in 2004 after finding that

there is no evidence to show who wrote the dates. This of course leaves open the question as to the time the appellant certified the offending documents. This court sitting in an appellate jurisdiction is not precluded from considering the evidence afresh and to decide whether, on the evidence available, the offences were committed on the dates specified in the charges. To recapitulate, the proved facts are as follows:

(1) It was the appellant who signed every single one of the LPOs.

(2) It was the appellant who instructed PW52 to submit the false invoices (based on which the LPOs were prepared).

(3) The appellant knew that the invoices contained false material particulars.

(4) It was the appellant who instructed PW6 to prepare the LPOs.

(5) The appellant knew that the particulars in the LPOs were false in material particulars.

(6) The appellant's intention in using the LPOs was to deceive the principal.

**[17]** What is the cumulative effect of these proved facts? In my view the irresistible and only reasonable inference that can be drawn is that the dates on the LPOs were written by the appellant himself after he signed them. It cannot be a coincidence that all the dates were written against his signatures. It will be a very long shot in the circumstances to suggest that the dates were written by someone else and on dates other than the dates appearing on the LPOs. In the ordinary course of government business, an official document will be dated immediately after it is signed, if it is not already dated. This is common knowledge and needs no proof. The appellant is not a country bumpkin, unused to government procedures. He was head of the Beaufort Education Office at the material time and was acting in that capacity when he signed the LPOs. It is highly unlikely that he would sign such important official documents without dating them. Further still is the likelihood that the dates were written by his subordinates without his instruction. The evidence shows that the appellant had total authority over the issuance of LPOs. To borrow the words of Lord Denning in *Miller v. Minister of Pensions* [1947] All ER 372 "of course it is possible, but not in the least probable."

**Section 44(1)(a) Of The Act**

**[18]** It was submitted that the learned trial judge misdirected herself when she said that PW52 was protected by s. 44(1)(a) of the Act. It was contended that PW52 had gone beyond concurrence, because after concurring with the appellant's request to submit the false invoices he proceeded to submit the invoices which ultimately led to the completion of the offence. In other words without the complicity of PW52 the crime would never have been perpetrated.

**[19]** There seems to be a misunderstanding on the proper application of s. 44(1)(a) of the Act. At p. 37 of the judgment the learned trial judge made the following remark:

> The short of it is that under section 44(1) no witness shall be regarded as an accomplice by reason of having been involved or in any manner concerned in the commission of the offence or having knowledge of the commission of the offence.

**[20]** Section 44(1)(a) of the Act provides as follows:

> 44(1) Notwithstanding any written law or rule of law to the contrary, in any proceedings against any person for an offence under this Act:
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> (a) no witness shall be regarded as an accomplice by reason only of such witness having:
>
> (i) accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any gratification from any person;
>
> (ii) given, promised, offered or agreed to give any gratification; or
>
> (iii) been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence;

**[21]** This provision modifies the rule on accomplice evidence. It does away with the need for corroboration. It must be noted however that the provision only refers to acts in relation to "any gratification". The word "gratification" here must mean "gratification" as defined in s. 2 of the Act. As such the provision does not apply across the board and has no application to offences which do not involve any gratification such as the offence under s. 11(c) of the Act in respect of which the appellant was charged. The gravamen of the offence under s. 11(c) of the Act is the intent to deceive the principal, which has no relation to any of the acts referred to in

s. 44(1)(a) of the Act. The learned trial judge was therefore wrong in invoking s. 44(1)(a) of the Act in relation to the evidence of PW52.

**[22]** If PW52 is not covered by s. 44(1)(a) of the Act, is he an accomplice whose evidence requires corroboration? Is he a *particeps criminis* in the offences committed by the appellant? PW52 is Yassin bin Nasah who is a businessman and owner of three companies whose business at all material times came mostly from government departments including the Education Department and in particular the Beaufort Education Office. It is an undisputed fact that when the appellant took over as head of the Beaufort Education Office in 2003, the department was owing PW52 a substantial sum of money for goods supplied and services rendered by his companies. In fact he had not been getting full payments from the department since 2000. Initially the appellant told PW52 that the department had no money to pay him, but several weeks later he asked PW52 to submit claims for the price of works and services that had purportedly been rendered. As instructed by the appellant PW52 submitted his claims through the invoices which contained the false particulars.

**[23]** PW52 candidly admitted that neither he nor the companies stated in the invoices had rendered any of the services stated in the invoices. It was on the strength of these invoices that the offending LPOs were prepared. On the evidence there can be no doubt that PW52 was an accomplice. He knew that the particulars in the invoices were false, yet he submitted them to the Beaufort Education Office for the purpose of making his claims. He had therefore colluded with the appellant in committing the offences. It was due to his connivance that the offences were committed. He was clearly involved in the criminal design to mislead the principal and this amounts to infamous conduct. That makes him a category one accomplice. The learned trial judge herself found PW52 to be an accomplice in the ordinary sense but went on to say:

> Even so, he would be the very kind of witness intended to be covered by section 44(1)(a) of the Anti-Corruption Act 1997 that is not to be regarded as an accomplice because of his involvement.

**[24]** This as stated earlier in this judgment is a misdirection. The question again is whether the misdirection has occasioned a miscarriage of justice. In my view it has not because although the learned trial judge was wrong in finding that PW52 was not an accomplice, she was right in finding that the evidence of PW52 was

sufficiently corroborated by the evidence of other prosecution witnesses. This is borne out by her reasons at pp. 38-40 of the judgment. As for her impression of PW52 as a witness this is how she described him:

> As to his credibility and the veracity of his evidence, I would say that he did not display any animosity of any kind towards the accused either in demeanour or in evidence. He came across as forthright and did not attempt to hide his dealings with the accused.

**[25]** Demeanour alone is of course not the touchstone of truth because a convincing witness may be an accomplished liar: per Edgar Joseph Jr. J (as he then was) in *Yeap Peng Hin v. PP* [1991] 3 CLJ 1907; [1991] 4 CLJ (Rep) 285. But the learned trial judge in the instant case did not rely on demeanour alone in considering whether the evidence of PW52 was reliable. She had tested his evidence against all other relevant evidence and considered the probabilities of the case. Having done that she accepted PW52's evidence that it was the appellant who asked him to prepare the false invoices. In the circumstances the learned trial judge's handling of PW52's evidence is not open to any valid criticism.

**[26]** Learned counsel also drew the court's attention to s. 114(b) of the Evidence Act 1950 which provides that the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This provision was the subject of an appeal in *PP v. Haji Ismail & Anor* [1940] 9 MLJ 76 where the Magistrate in acquitting the accused who was charged under s. 161 of the Penal Code automatically applied the presumption. In ruling that the learned Magistrate was in error Cussen J said at p. 79:

> There is no question of the mechanical application of any general rule of presumption. When it is a question of this particular presumption, the credibility of the witness who is in the position of an accomplice must be individually judged as any other witness, the same considerations being applied, with the added one that he is an accomplice. The court must consider who and what he is, his demeanour, hearing, the manner and quality and substance of his evidence in itself and in relation to all the circumstances of the case. The nature, quality and degree of his complicity must be examined. Then finally the Court must form its opinion whether he is to be given credit and his evidence accepted without corroboration or not.
>
> He is a competent witness and as such is entitled to have his credibility judged in itself; his evidence must be weighed and examined and not put aside unjudged and unconsidered because he is an accomplice.

**[27]** It is therefore wrong to apply the presumption under s. 114(b) of the Evidence Act without giving due consideration to the evidence of the accomplice. In any event, this court is bound by s. 44(2) of the Act which provides:

> (2) Notwithstanding any written law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of an accomplice or agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

**[28]** The decision of the Federal Court in *Tengku Mahmood v. PP* [1974] 1 LNS 176 and of the High Court in *Ghazali Salleh & Anor v. PP* [1993] 3 CLJ 638 relied upon by learned counsel must therefore be considered in the light of this provision. The same goes with the Federal Court decision in *Dato' Seri Anwar Ibrahim* where the offence charged does not involve any provision similar to subsections 44(1) and (2) of the Act. For the record that case concerns a sexual offence for which corroboration as a rule of prudence is ordinarily required.

**[29]** The intention behind subsections 44(1) and (2) of the Act is clear, and that is to give the Anti-Corruption authority sufficient clout to combat corrupt practices involving willing partners in crime. The court must give full effect to these provisions unless it can be shown that the judgment is perverse or that a substantial miscarriage of justice had occurred. To do otherwise would be to defeat the intention of Parliament.

**Wholesale Acceptance Of The Evidence Of PW52 And PW6**

**[30]** The appellant's contention is that the learned trial judge was wrong in accepting wholesale the evidence of PW52 and PW6, an executive officer at the Beaufort Education Office. I have touched on the evidence of PW52. As for PW6 the crucial part of his evidence is that he prepared the LPOs on the instruction of the appellant. According to him no LPO was to be prepared or issued unless instructed by the appellant. He testified that the procedure after preparation of the LPOs was that he would bring every single one of them to the appellant for the appellant to sign at the specified columns. He confirmed that the appellant signed all the LPOs in his presence. The learned trial judge accepted his evidence and found no reason to believe that he was involved in a criminal design to make the false declarations in the LPOs. She rejected the

defence suggestion that PW6 had a grudge against the appellant for taking away his earlier active role of receiving invoices and preparing LPOs.

**[31]** Learned counsel pointed out that all the LPOs were dated earlier than the invoices. This according to counsel casts doubts on the evidence of PW6 because the procedure as described by him was that the LPOs would be prepared only after the invoices were received. In my view this point is of no significance because when the appellant signed the LPOs the false particulars in the invoices were already written on the LPOs and he certified them to be correct.

**[32]** Is it wrong for the learned trial judge to accept wholesale the evidence of PW52 and PW6? Speaking for myself I do not see why the evidence of a witness should not be believed in its entirety if otherwise the whole of his evidence is credible and reliable. In this case the learned trial judge had seriously considered the testimonies of both PW52 and PW6 and found their evidence to be reliable. Having regard to the totality of the evidence and the probabilities of the case I see no reason to disagree with her. In any case it is for the learned trial judge who had the advantage of seeing PW52 and PW6 giving evidence to decide whether they were truthful witnesses or otherwise. The appellant's complaint over the trial judge's acceptance of the evidence of PW52 and PW6 is therefore without basis.

**Rejection Of The Defence Case**

**[33]** The appellant's complaint is that in rejecting the defence case the learned trial judge failed to comply with s. 182A(1) of the Code in that she did not "re-evaluate" the prosecution evidence in deciding whether the prosecution had proved its case beyond reasonable doubt. It was contended that there is a possibility the appellant signed blank LPOs as claimed by him in his defence. With due respect I do not think the duty imposed by s. 182A(1) of the Code is for the court to re-evaluate the prosecution's evidence. What the section requires is for the court to consider the entire evidence and determine whether the evidence presented by the defence has cast a reasonable doubt in the court's mind as to the truth of the prosecution case. This is actually a codification of the procedure laid down by Suffian J (as he then was) in *Mat v. PP* [1963] 1 LNS 82.

**[34]** The need to re-evaluate the prosecution's evidence does not arise because at the end of the prosecution's case the prosecution's evidence had been subjected to a maximum evaluation and the witnesses found to be credible witnesses: *PP v. Ong Cheng Heong* [1998] 4 CLJ 209; *PP v. Dato' Seri Anwar Ibrahim (No. 3)* [1999] 2 CLJ 215; *Balachandran v PP* [2005] 1 CLJ 85; *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457.

**[35]** The mainstay of the defence is that when the appellant signed the offending LPOs they were all blank. Learned counsel submitted that the learned trial judge was wrong in rejecting the appellant's explanation. I must say at the outset that there is no basis for this contention. In the first place this line of defence was only raised for the first time when the appellant gave evidence and was never put to any of the prosecution witnesses, in particular PW6 who testified that the particulars in the LPOs were already filled in by him before he presented them to the appellant for his signatures. It would have been wrong for the learned trial judge to accept this explanation as being reasonable: see *Re Pichi Muth*u [1970] 2 MLJ 143 where Sharma J said:

> The learned president thought that the explanation given by the accused that the money had slipped out of the book containing the driving licence was reasonable in spite of the fact that not a word of it was suggested to either PW1 or PW2 ... The learned president had misdirected himself in ignoring and overlooking the evidence of PW1 and PW2 and the total lack of any cross-examination of these witnesses touching the defence which was subsequently suggested for the first time only when the defence was called.

**[36]** The record of appeal shows that the learned trial judge had given careful consideration to every material point raised by the defence and had rejected them. She was satisfied that the appellant's explanation had failed to cast any reasonable doubt in her mind as to the truth of the prosecution's case. It follows therefore that the appellant must be convicted of the offences charged.

## Conclusion

For reasons stated above I am firmly of the view that the appellant had been rightly convicted inspite of the learned trial judge's misdirections on the date of the offence and the applicability of s. 44(1)(a) of the Act. The appeal against conviction was accordingly dismissed. As for the appeal against sentence learned counsel for the appellant did not say a word in support of the

petition. The appeal was therefore deemed to be abandoned and was accordingly dismissed. In any event I am of the view that the sentence is appropriate, fitting to the circumstances of the crime and is not manifestly excessive. The penalty for the offence is imprisonment for a term of not less than 14 days and not more than 20 years and the offender is also be liable to be fined. The principles are settled. Unless it can be shown that the sentencing judge had erred in principle or had considered irrelevant factors or that the sentence is manifestly excessive, it is not right to interfere with the sentence passed by the lower court.

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